Rev. Proc. 82-2, 1982-1 C.B. 367

SECTION 1. PURPOSE

The purpose of this revenue procedure is to identify the states and circumstances in which the Service will not require an express provision for the distribution of assets upon dissolution in an exempt organization's articles of incorporation, trust instrument, or other organizing document to satisfy the 'organizational' test in section 1.501(c)(3)-1(b)(4) of the Income Tax Regulations. Also, this procedure provides a sample of an acceptable dissolution provision for organizations that are required to have an express provision for the distribution of assets upon dissolution.

SEC. 2. BACKGROUND

.01 Section 1.501(c)(3)-1(b)(4) of the regulations provides that:

> (4) Distribution of assets on dissolution. An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders. (Emphasis added.)

.02 The issue of the applicability of state law in relation to section 1.501(c)(3)-1(b)(4) of the regulations as to a particular organization arises only where the organization itself has not provided for the distribution of its assets upon dissolution in its articles of incorporation, organizing document, or trust instrument. When state law satisfies the provisions of section 1.501(c)(3)-1(b)(4), it is not necessary to require an organization to amend its articles of incorporation or organizing document, or to require a trust to obtain a judicial decree amending its trust instrument, in order to satisfy the organizational test for qualification as an exempt organization described in section 501(c)(3) of the Code, where all the other requirements for exemption are met.

.03 The issue of whether section 1.501(c)(3)-1(b)(4) of the regulations is satisfied under state law can be broken down into four areas according to the type of entity involved:

> (1) the cy pres doctrine as to inter vivos charitable trusts;

(2) the cy pres doctrine as to testamentary charitable trusts, which can exist in a particular state by case law and/or by statute;

(3) state corporate law containing statutes that provide for the distribution of assets upon the dissolution of nonprofit corporations; and

(4) state law by court decision or statute relating to unincorporated associations.

Each of these four areas will be treated separately in this revenue procedure.

SEC. 3. GUIDELINES

.01 Inter Vivos Charitable Trusts.

1 Because there is no guarantee under the law of any of the fifty-one jurisdictions that cy pres would be used to keep an inter vivos charitable trust from failing, any inter vivos charitable trust should be required to have an adequate dissolution provision in its trust instrument to satisfy the requirements of section 1.501(c)(3)-1(b)(4) of the regulations.

.02 Testamentary Charitable Trusts.

1 The courts in the following states always apply the cy pres doctrine or the doctrine of equitable approximation to keep a charitable testamentary trust from failing, and thus section 1.501(c)(3)-1(b)(4) of the regulations with respect to charitable testamentary trusts is satisfied:

Alabama

Louisiana

Pennsylvania

South Dakota

Virginia

West Virginia (However, a state court decision has held that the cy pres doctrine does not apply to a scientific organization in West Virginia.

2 The courts in the jurisdictions listed below will apply the cy pres doctrine to keep a charitable testamentary trust from failing when the language of the trust instrument demonstrates that the settlor had a general intent to benefit charity, and not merely a specific intent to benefit a particular institution. In such jurisdiction the cy pres doctrine may be relied upon by a charitable testamentary trust to satisfy section 1.501(c)(3)-1(b)(4)

of the regulations only when the settlor has demonstrated a general charitable intent in the language of the trust instrument. Unless the testator manifests a general intent to benefit charity, the Service will require the testamentary charitable trust to provide an express dissolution provision in the trust instrument to satisfy section 1.501(c)(3)-1(b)(4).

Arkansas

California

Colorado

Connecticut

Delaware

District of Columbia

Florida

Georgia

Illinois

Indiana

Iowa

Kansas

Kentucky

Maine

Maryland

Massachusetts

Michigan

Minnesota

Mississippi

Missouri

Nebraska

New Hampshire

New Jersey

New York

North Carolina

Ohio

Oklahoma

Oregon

Rhode Island

Tennessee

Texas

Vermont

Washington

Wisconsin

3 Charitable testamentary trusts in the following states need a dissolution provision in the trust instrument to satisfy section 1.501(c)(3)-1(b)(4) of the regulations because these states have either expressly rejected or have never applied the cy pres doctrine:

Alaska

Arizona

Hawaii

Idaho

Montana

Nevada

New Mexico

North Dakota

South Carolina

Utah

Wyoming

.03 Nonprofit Charitable Corporations.

1 The statutes applicable to nonprofit charitable corporations in the states listed below will satisfy the provisions of section 1.501(c)(3)-1(b)(4) of the Regulations:

Arkansas

California

Louisiana

Massachusetts

Minnesota

Missouri

Ohio

Oklahoma

All other states, and the District of Columbia do not have statutes applicable to nonprofit charitable corporations that will satisfy the provisions of section 1.501(c)(3)-1(b)(4). Thus, nonprofit corporations in the eight named states do not need a dissolution provision to satisfy section 1.501(c)(3)-1(b)(4). A nonprofit corporation in a jurisdiction not listed needs an adequate dissolution provision in its organizing document to satisfy section 1.501(c)(3)-1(b)(4).

.04 Unincorporated Nonprofit Associations.

None of the fifty-one jurisdictions provides certainty by statute or case law, for the distribution of assets upon the dissolution of an unincorporated nonprofit association. Therefore, any unincorporated nonprofit association needs an adequate dissolution provision in its organizing document to satisfy the requirements of section 1.501(c)(3)-1(b)(4) of the regulations.

.05 Sample Dissolution Provision.

1 For any organization that needs a dissolution provision in its organizing

instrument to satisfy the provisions of section 1.501(c)(3)-1(b)(4) of the regulations, the following language is illustrative of what may be used:

> (a) Upon the dissolution of (this organization), assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose.